



## **Should The Law Be Changed To Give Consumers More Protection When Businesses Go Bust?**

When customers of Lowcostholidays discovered the shocking truth that the travel firm had unexpectedly gone bust, they not only lost their holidays but in many cases had to pay for it again with little or no prospect of recovering their original payments.

Unfortunately this is not an isolated case and following a number of high profile businesses going bust over recent years the Department for Business, Energy and Industrial Strategy has commissioned a report from the Law Commission to look into whether anything could be done to give consumers more protection.

The Law Commission is an independent body set up by Parliament to keep the laws of England and Wales under review and to recommend reforms where necessary. The Commission recently published the Consumer Prepayments on Retailer Insolvency Report which was laid before Parliament on 13 July 2016.

Julian Ireland, a Commercial Litigation specialist lawyer at leading and award winning regional law firm Pictons says "The report has recommended that consumers who prepay for goods or services over £250 in the six month period prior to a formal insolvency process should be paid out as a preferential creditor instead of an unsecured creditor.

"As the law currently stands, consumers are classed as 'unsecured creditors' and are therefore at the bottom of the pile when it comes to recovering their money. Those at the top, the preferential creditors, get paid first. The chances of consumers recouping any losses diminishes as the pot of cash gets smaller and smaller which inevitably means that as the unsecured creditor consumers get nothing or at best very little."

The Law Commission has recommended that the consumer should be pushed up the list of debtors in order to improve their chances of receiving a refund.

The criteria that the consumer must satisfy include:

1. The consumer must be an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.
2. Money must have been paid to an insolvent business for goods and services not received.
3. The payment must have been more than £250 and paid within six months of the business entering a formal insolvency process.
4. The consumer did not use a payment method which allows a chargeback remedy i.e. using a credit card.

Currently this is only a recommendation and there is no guarantee that Parliament will accept the recommendations and introduce the appropriate legislation.

Julian Ireland concludes “Anything that pushes the consumer up the hierarchy of creditors and increases their chances of a refund is good news, but clearly the business must have the money in the first place to make these payments even if they are only partial refunds. If this recommendation is accepted by Parliament it is not going to assist those consumers already affected by an insolvent business but it will hopefully protect consumers in the future.”